SBCivil Writ Petition No.1389/2004

Smt. Rampyari
v.
Addl.Distt.Collector, Bhilwara & Ors.

Date of Order :: 5th May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. T.S.Champawat, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. Rakesh Arora, for the respondent No.3.

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By this petition for writ a challenge is given to the correctness, validity and propriety of the order dated 28.5.2003 passed by Additional Collector, Bhilwara exercising powers under Section 97 of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as "the Act of 1994"). By the order aforesaid learned Additional Collector, Bhilwara while accepting a revision petition preferred by respondent Shri Jeetmal quashed the patta issued by Gram Panchayat, Tharoda dated 5.2.2002 in favour of the petitioner. While accepting the revision petition the trial court held that allotment by way of sale was made by Gram Panchayat in favour of the petitioner in violation of mandatory provisions of the Act of 1994 and the same adversely effected the interest of the Gram Panchayat.

While giving challenge to the order aforesaid the only contention of counsel for the petitioner is that the sale deed was executed and registered by Sub

Registrar, Bijolia on 8.3.2002, therefore, the Additional Collector while exercising powers under Section 97 of the Act of 1994 was lacking jurisdiction to cancel the patta and set aside the sale deed.

Heard counsel for the parties.

I do not find any force in the contention of counsel for the petitioner that the sale deed was executed and registered, therefore, the jurisdiction vested with Additional Collector under Section 97 of the Act of 1994 to modified, annulled, reversed or remitted for reconsideration of an order stood seized. In the instant matter the Additional Collector while quashing the resolution of Gram Panchayat and patta issued by it remitted the matter to the Gram Panchayat for its reconsideration. The execution and registration of the sale deed is a consequential act based upon the sale made by Gram Panchayat. If the sale itself is void then the sale deed, though it might be registered, is of no consequence.

Hon'ble Supreme Court in the case of Mithoo Shahani and others v. The Union of India and others, reported in AIR 1964 SC 1536, while dealing with a similar controversy, held as under:-

> “If an order of allotment which is the basis upon which a grant is made is set aside it

> would follow, and the conclusion is inescapable that the grant cannot survive, because in order that that grant should be valid it should have been effected by a competent officer under a valid order. If the validity of that order is effectively put an end to it would be impossible to maintain unless there were any express provision in the Act or in the rules that the grant still stands. It was not suggested that there was any provision in the Act or in the rules which deprives the order setting aside an order of allotment of this effect. We do not therefore consider that there is any substance in the second point urged by learned counsel."

In the instant matter too when validity of patta is effectively put to an end, then it would be impossible to maintain the sale deed. Counsel for the petitioner also failed to point out any provision under the Panchayati Raj Act or the Rules framed thereunder that deprives the order setting aside a order of allotment will not effect its subsequent instrument.

In view of it, the contention raised by counsel for the petitioner is having no merit. No other contention is pressed into service by counsel for the petitioner while giving challenge to the order impugned.

For the reasons mentioned above, the writ petition fails and, therefore, stands dismissed.

( GOVIND MATHUR ),J.

kkm/ps.